

ABA Commission on Ethics 20/20

Recommended:

1. Updating/revising Model Rules of Professional Conduct to reflect globalization and technology
2. Updating/revising admission- and non-member-related model rules to reflect more mobile and globalized law practice

With minor changes, ABA House of Delegates adopted all recommendations

Changes to Model Rules of Professional Conduct

Examples:

- MR 1.1 (competency) new comments
 - Outsourcing to other lawyers
 - Keep up on benefits and risks associated with relevant technology
- MR 1.18 (prospective clients)
 - Clarified (e.g., now “communicates”)
 - Factors for determining if one is a prospective client
- MR 1.6 (confidentiality)
 - Allows a lawyer to disclose client information to detect and resolve conflicts when changing jobs
 - Obligates lawyers to make reasonable efforts to safeguard client information
- MR 7.2 (advertising)
 - Allows lawyers to pay for Internet-based client leads

What ABA Commission on Ethics 20/20 **didn't do**

- Non-lawyer ownership of law firms
- Move to European model of conflicts (matter instead of clients)
- Choice of law provisions re: conflicts

State Bar pending rule-change petition

- Recommends adopting most of the ethical rule changes
 - A few parts customized for Arizona (e.g. ER 4.4)
- Does not address admission or non-member practice changes

Admissions/non-member model rule changes

- Model Rule on Admission on Motion
- Model Rule on In House Counsel Registration
- Model Rule on Pro Hac Vice
- New Model Rule on Practice Pending Admission

Who can practice law in this state?

Rule 31(b), Ariz. R. Sup. Ct.

Authority to Practice. Except as hereinafter provided in section (d), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an **active** member of the state bar.

Who can practice law in this state?

- If not active member, can't "establish an office or other systematic and continuous presence in this state for the practice of law"
- Lawyer admitted in another US jurisdiction may practice here temporarily if....
 - in some circumstances (ER 5.5(c))
 - "[A]rise out of or are reasonably related"
 - Expect to be authorized to appear PHV
 - ADR or potential ADR

Who can practice law in this state?

- Registered in-house counsel (limited)
- Pro hac vice (limited)
- Federal practice (limited)

A few issues with current model

Non-AZ lawyers who:

- Live here but practice the law of another jurisdiction?
 - Admission cases/UPL Op. 10-02
- Live here part-time?
- Have virtual offices and reach into the state?
- Are in-house counsel for an Arizona entity but are physically located outside of Arizona?
- Are serial PHV applicants?

A few other issues related to changing practice

- Of counsel arrangements
 - One firm for conflicts but two firms for fees
- Can be AZ office (or of counsel?) of a DC or UK firm that includes non-lawyer owners?
- Why shouldn't Sears be able to own a law firm?
- Conflicts across jurisdictions
- What about access to justice?
 - Rule 38 complicated scenarios